Laws in the manner set forth in Section 1. Furthermore, the Exchange has always intended to allow amendments to the By-Laws by either the Company Member or the Board, as evidenced by the discussions of this provision in both the Governance Approval Order and Notice of Filing.7 The existing language in Section 1 itself, however, provides that the By-Laws may be amended by the Company Member and by the majority of the Exchange’s Board of Directors, so the Exchange is now seeking to make the non-substantive change from “and” to “or” in Section 1 to reflect the rule’s original intent.

2. Statutory Basis

The Exchange believes that its proposed change is consistent with Section 6(b) of the Act,8 in general, and furthers the objectives of Section 6(b)(5) of the Act,9 in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest, by permitting the Exchange to align the implementation date of its Governance Proposal with its affiliates Nasdaq GEMX, LLC and Nasdaq MRX, LLC, and to make non-substantive corrections to the proposed By-Laws. The Exchange’s proposal does not significantly affect the protection of investors or the public interest because this proposal does not make any substantive changes to the Governance Proposal itself; the only changes are to extend the implementation date and to make non-substantive corrections to the proposed By-Laws, as discussed above. As noted above, the Exchange will provide advance notice to members with respect to the specific implementation date. In addition, the Exchange believes that the non-substantive amendments to the By-Laws proposed herein will alleviate potential confusion as to the applicability of the Exchange’s rules, which will protect investors and the public interest.

B. Self-Regulatory Organization’s Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The Exchange’s proposal does not impose any significant burden on competition because the Governance Proposal and the proposed non-substantive changes to the By-Laws will apply to all market participants in a uniform manner once implemented.

C. Self-Regulatory Organization’s Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A)(iii) of the Act and subparagraph (f)(6) of Rule 19b–4 thereunder.11

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is: (i) Necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission’s Internet comment form (http://www.sec.gov/rules/sro.shtml); or
- Send an email to rule-comments@sec.gov. Please include File Number SR–ISE–2017–80 on the subject line.

Paper Comments

- Send paper comments in triplicate to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090. All submissions should refer to File Number SR–ISE–2017–80. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission’s Internet Web site (http://www.sec.gov/rules/sro.shtml). Copies of the submission, all subsequent amendments, all written communications relating to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission’s Public Reference Room, 100 F Street NE., Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying by the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–ISE–2017–80, and should be submitted on or before October 5, 2017.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.12

Eduardo A. Aleman, Assistant Secretary.

[FR Doc. 2017–19477 Filed 9–13–17; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 32812; 812–14781]

Innovator ETFs Trust, et al.

September 11, 2017.

AGENCY: Securities and Exchange Commission (“Commission”).

ACTION: Notice.

Notice of an application for an order under section 6(c) of the Investment Company Act of 1940 (the “Act”) for an exemption from sections 2(a)(32).


11 17 CFR 240.19b–4(f)(6). In addition, Rule 19b– 4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

Persons who wish to be notified of a hearing may request notification by writing to the Commission’s Secretary.

**ADDRESSES:** Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090; Applicants: The Trust and Innovator, 120 N. Hale Street, Suite 200, Wheaton, Illinois 60187; the Distributor, 615 East Michigan Street, Milwaukee, Wisconsin 53202.

For further information contact: Hae-Sung Lee, Attorney-Adviser, at (202) 551–7345, or Andrea Ottomanelli Magovern, Acting Branch Chief, at (202) 551–6821 (Division of Investment Management, Chief Counsel’s Office).

**Supplementary Information:**

The following is a summary of the application. The complete application may be obtained via the Commission’s Web site by searching for the file number, or for an applicant using the Company name box, at http://www.sec.gov/search/search.htm or by calling (202) 551–8090.

**Summary of the Application**

1. Applicants request an order that would allow Funds to operate as actively-managed exchange traded funds (“ETFs”). Each Fund will consist of a portfolio of securities and other assets and investment positions (“Portfolio Instruments”). Each Fund will disclose on its Web site the identities and quantities of the Portfolio Instruments that will form the basis for the Fund’s calculation of NAV at the end of the day.

3. Shares will be purchased and redeemed in Creation Units and generally on an in-kind basis. Except where the purchase or redemption will include cash under the limited circumstances specified in the application, purchasers will be required to purchase Creation Units by depositing specified instruments (“Deposit Instruments”), and shareholders redeeming their shares will receive specified instruments (“Redemption Instruments”). The Deposit Instruments and the Redemption Instruments will each correspond pro rata to the positions in the Fund’s portfolio (including cash positions) except as specified in the application.

4. Because shares will not be individually redeemable, applicants request an exemption from section 5(a)(1) and section 2(a)(32) of the Act that would permit the Funds to register as open-end management investment companies and issue shares that are redeemable in Creation Units only.

5. Applicants also request an exemption from section 22(d) of the Act and rule 22c–1 under the Act as secondary market trading in shares will take place at negotiated prices, not at a current offering price described in the Fund’s prospectus, and not at a price based on NAV. Applicants state that (a) secondary market trading in shares does not involve a Fund as a party and will not result in dilution of an investment in shares, and (b) to the extent different prices exist during a given trading day, or from day to day, such variances occur as a result of third-party market forces, such as supply and demand. Therefore, applicants assert that secondary market transactions in shares will not lead to discrimination or preferential treatment among purchasers. Finally, applicants represent that share market prices will be disciplined by arbitrage opportunities, which should prevent
shares from trading at a material discount or premium from NAV.
6. With respect to Funds that hold non-U.S. Portfolio Instruments and that
effect creations and redemptions of Creation Units in kind, applicants request relief from the requirement imposed by section 22(e) in order to
allow such Funds to pay redemption proceeds within fourteen calendar days following the tender of Creation Units for redemption. Applicants assert that the requested relief would not be
inconsistent with the spirit and intent of section 22(e) to prevent unreasonable, undisclosed or unforeseen delays in the actual payment of redemption proceeds.
7. Applicants request an exemption to permit Funds of Funds to acquire Fund shares beyond the limits of section 12(d)(1)(A) of the Act; and the Funds, and any principal underwriter for the Funds, and/or any broker or dealer registered under the Exchange Act, to sell shares to Funds of Funds beyond the limits of section 12(d)(1)(B) of the Act. The application’s terms and conditions are designed to, among other things, help prevent any potential (i) undue influence over a Fund through control or voting power, or in connection with certain services, transactions, and underwritings, (ii) excessive layering of fees, and (iii) overly complex fund structures, which are the concerns underlying the limits in sections 12(d)(1)(A) and (B) of the Act.
8. Applicants request an exemption from sections 17(a)(1) and 17(a)(2) of the Act to permit persons that are affiliated persons, or second-tier affiliates, of the Funds, solely by virtue of certain ownership interests, to effectuate purchases and redemptions in-kind. The deposit procedures for in-kind purchases of Creation Units and the redemption procedures for in-kind redemptions of Creation Units will be the same for all purchases and redemptions and Deposit Instruments and Redemption Instruments will be valued in the same manner as those Portfolio Instruments currently held by the Funds. Applicants also seek relief from the prohibitions on affiliated transactions in section 17(a) to permit a Fund to sell its shares to and redeem its shares from a Fund of Funds, and to engage in the accompanying in-kind transactions with the Fund of Funds.

The purchase of Creation Units by a Fund of Funds directly from a Fund will be accomplished in accordance with the policies of the Fund of Funds and will be based on the NAVs of the Funds.
9. Section 6(c) of the Act permits the Commission to exempt any persons or transactions from any provision of the Act if such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Section 12(d)(1)(i) of the Act provides that the Commission may exempt any person, security, or transaction, or any class or classes of persons, securities, or transactions, from any provision of section 12(d)(1) if the exemption is consistent with the public interest and the protection of investors. Section 17(b) of the Act authorizes the Commission to grant an order permitting a transaction otherwise prohibited by section 17(a) if it finds that (a) the terms of the proposed transaction are fair and reasonable and do not involve overreaching on the part of any person concerned; (b) the proposed transaction is consistent with the policies of each registered investment company involved; and (c) the proposed transaction is consistent with the general purposes of the Act.

For the Commission, by the Division of Investment Management, under delegated authority.
Eduardo A. Aleman,
Assistant Secretary.

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION


Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing of Amendment No. 1 and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment No. 1, To Amend Rules 4702 and 4754 Relating to the Nasdaq Closing Cross and To Make Other Related Changes

September 8, 2017.

I. Introduction

On July 13, 2017, The NASDAQ Stock Market LLC (“Nasdaq” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”) 1 and Rule 19b–4 thereunder, 2 a proposed rule change to amend Exchange Rules 4702 and 4754 relating to the Nasdaq Closing Cross and to make other related changes. The proposed rule change was published for comment in the Federal Register on July 27, 2017.3 On August 22, 2017, the Exchange filed Amendment No. 1 to the proposed rule change. 4 The Commission received no comment letters on the proposed rule change. The Commission is publishing this notice to solicit comments on Amendment No. 1 from interested persons, and is approving the proposed rule change, as modified by Amendment No. 1, on an accelerated basis.

II. Description of the Proposed Rule Change, as Modified by Amendment No. 1

As described in more detail below, the Exchange proposes to enhance the operation of the Nasdaq Closing Cross by extending the time period during which members may submit LOC Orders,6 and to make other changes relating to the Nasdaq Closing Cross and the Nasdaq Opening Cross.

A. Acceptance of LOC Orders and Related Changes

Currently, Exchange Rule 4702(b)(12)(A) provides that LOC Orders may be entered between 4:00 a.m. ET and immediately prior to 3:50 p.m. ET. The Exchange proposes to amend this rule to permit LOC orders to be entered between 3:50 p.m. ET and immediately prior to 5:55 p.m. ET, provided that there is a First Reference Price.7 The Exchange proposes to define the First Reference Price to mean the

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3 The requested relief would apply to direct sales of shares in Creation Units by a Fund to a Fund of Funds and redemptions of those shares. Applicants, moreover, are not seeking relief from section 17(a) for, and the requested relief would not apply to, transactions where a Fund could be deemed an affiliated person, or a second-tier affiliate, of a Fund of Funds because an Advisor or an entity controlling, controlled by or under common control with an Advisor provides investment advisory services to that Fund of Funds.